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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/945,350	08/31/2001	Eddie Drake	338528007US1	1476

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EXAMINER	
SALTARELLI, DOMINIC D	
ART UNIT	**PAPER NUMBER**
2623	

MAIL DATE	DELIVERY MODE
10/30/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/945,350	DRAKE ET AL.	
	Examiner	Art Unit	
	Dominic D. Saltarelli	2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 September 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-102* is/are pending in the application.

4a) Of the above claim(s) *1-31,34,37,40,48 and 72-102* is/are withdrawn from consideration.

5)☒ Claim(s) *50-71* is/are allowed.

6)☒ Claim(s) *32,33,35,36,38-47 and 49* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed September 10, 2007 have been fully considered but they are not persuasive.

First, applicant argues, regarding claims 32, 33, 35, 36, 38, 39, 41-47 and 49, that the applied references fail to teach "in response to an interaction with the one remote computing device by one or more viewers of a **corresponding** content presentation device associated with the one remote computing device" (applicant's remarks, page 25, 4th paragraph).

In response, the corresponding content presentation devices are the televisions on which the viewers are viewing content (see Brown, col. 4, lines 12-24).

Second, applicant argues that there is no motivation to combine the Brown and Lambert references, stating the motivation provided by the examiner is a mere conclusory statement (applicant's remarks, pages 25-26).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5

USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation for improving user statistics gathering is gleaned from the primary reference, Brown. Column 1, lines 39-41 read "There are several reason for logging events, including to monitor system operation, detect system errors, and derive statistical data." It is expressly stated here that Brown acknowledges that knowledge of the operability of a subscriber device is highly relevant to a system attempting to track the usage habits of subscribers, which is the cited underlying rational for combination of Brown with Lambert, who provides a means for providing such information in the event that event data is not received from a user system within a predetermined period of time (see Lambert, col. 28, lines 40-59).

Election/Restrictions

2. Claims 1, 2, 4-6, 8-31, 40, and 48 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on September 10, 2007.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 32, 33, 35, 36, 38-47, and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (5,857,190, of record) in view of Lambert et al. (6,038,601, listed in the IDS supplied by applicant May 20, 2002) [Lambert] and Zigmond et al. (6,698,020, of record) [Zigmond].

Regarding claims 32, 33, 43, 47, and 49, Brown discloses a method in an event tracking server (shown as event log manager 56 in fig. 1) for monitoring interactions between viewers of content presented on content presentation devices and set top boxes associated with those content presentation devices (col. 3 line 65 – col. 4 line 24), the set top boxes for assisting in presented the content to the viewers (col. 4, lines 12-24), comprising:

receiving a plurality of event messages that are each sent from one of the multiple set top boxes in response to an interaction with the one set top box by viewers of a corresponding content presentation device associated with the one set top box (col. 5, lines 9-42); and

tracking audience information for the presented content based on the received event message of the set top boxes (col. 6, lines 45-58).

Brown fails to disclose determining one or more of the set top boxes from which an event message has not been received for a predetermined period of time, sending a status message to each of the determined set top boxes, determining a current status of each of the determined set top boxes, and the event tracking server monitoring previous displays of a specified advertisement

and analyzing subsequent interaction events to determine a disapproval by advertisement viewers of the specified advertisement, the server adapted to change advertisement content responsive to the disapproval by advertisement viewers.

In an analogous art, Lambert teaches a system for gathering user statistics regarding content chosen for viewing (fig. 5) wherein accurate gathering of usage statistics is accomplished by polling a subscriber for status information (the server is seeking confirmation of an active client device, col. 27, lines 55-67) when no notifications have arrived from said subscriber after a predetermined period of time (col. 28, lines 39-59).

It would have been obvious at the time to a person of ordinary skill in the art to modify the method disclosed by Brown to include polling a subscriber for status information when no event messages have arrived from said subscriber after a predetermined period of time, as taught by Lambert, for the benefit of improved usage statistics gathering, as knowledge of the operability of a subscriber device is highly relevant to a system attempting to track the usage habits of subscribers.

Brown and Lambert fail to disclose the event tracking server monitoring previous displays of a specified advertisement and analyzing subsequent interaction events to determine a disapproval by advertisement viewers of the specified advertisement, the server adapted to change advertisement content responsive to the disapproval by advertisement viewers.

In an analogous art, Zigmond teaches an event tracking, advertisement insertion system (col. 6, lines 1-12 and col. 7, lines 50-67) wherein an audience tracker is adapted to monitor previous displays of a specified advertisement and analyze subsequent interaction events to determine a disapproval by advertisement viewers of the specified advertisement (the system tracks which advertisements are viewed, and more importantly, specifically notes which advertisements are switched away from by users, col. 9, lines 21-38), and changes advertisement content responsive to the disapproval by advertisement viewers ("the viewer response information remains at the ad insertion device to further modify the advertisement selection process", col. 9, lines 39-55, wherein observed viewer preferences are used in determining the selection of advertisements, col. 11, lines 13-30), for the benefit of allowing advertisers to both more effectively target advertisements and test the popularity or effectiveness of current advertisements (col. 9, lines 33-38).

It would have been obvious at the time to a person of ordinary skill in the art to modify the method disclosed by Brown and Lambert to include monitoring previous displays of a specified advertisement and analyzing subsequent interaction events to determine a disapproval by advertisement viewers of the specified advertisement, and changing advertisement content responsive to the disapproval by advertisement viewers, as taught by Zigmond, for the benefit of allowing advertisers to both more effectively target advertisements and test the popularity or effectiveness of current advertisements.

Regarding claim 35, Brown, Lambert, and Zigmond disclose the method of claim 32, wherein the receiving of the plurality of event messages is in real time with respect to corresponding interactions (Brown, col. 7, lines 54-67).

Regarding claim 36, Brown, Lambert, and Zigmond disclose the method of claim 32, wherein the plurality of event messages each additionally include information related to the viewers of the content presentation device associated with the set top box from which the event message was received (the events describe actions taken by viewers, such as key depressions made on a remote control, Brown, col. 6, lines 34-44).

Regarding claims 38 and 39, Brown, Lambert, and Zigmond disclose the method of claim 32, including presenting the digital content to the corresponding content presentation devices (content is routed through the set top box to a television, Brown, col. 4, lines 12-24).

Regarding claim 41, Brown, Lambert, and Zigmond disclose the method of claim 32, but fail to disclose the status message is sent using a reliable transmission protocol.

Reliable transmission protocols are notoriously well known in the art, as said protocols ensure that messages arrive error free at their destinations.

It would have been obvious at the time to a person of ordinary skill in the art to modify the method disclosed by Brown, Lambert, and Zigmond to include utilizing a reliable transmission protocol, for the benefit of ensuring that the status messages arrive error free at their destinations.

Regarding claim 42, Brown, Lambert, and Zigmond disclose the method of claim 32, wherein the status message is a ping message (Lambert, col. 25, lines 47-55).

Regarding claim 44, Brown, Lambert, and Zigmond disclose the method of claim 32, including requesting from the set top boxes information from viewers of a corresponding content presentation device associated with each set to box, and in response receiving the requested viewer information in the tracking of the audience information (Zigmond, "requests for additional information", col. 9, lines 21-38).

Regarding claims 45 and 46, Brown, Lambert, and Zigmond disclose the method of claim 32, wherein the digital content is sent from a content server to the set top box in a multi-cast mode (Brown, col. 3 line 65 – col. 4 line 7) or a single-cast mode (Brown, col. 13, lines 20-28).

Allowable Subject Matter

5. Claims 50-71 are allowed.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dominic D. Saltarelli whose telephone number is (571) 272-7302. The examiner can normally be reached on Monday - Friday 9:00am - 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller can be reached on (571) 272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DS

ANDREW Y. KOENIG
PRIMARY PATENT EXAMINER